

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

KAITLYN PORTER,

Plaintiff, :

v.

Case No. 2:21-cv-4077
Judge Sarah D. Morrison
Magistrate Judge Elizabeth A.
Preston Deavers

TWO GUYS AND A
CALCULATOR, LLC, *et al.*, :

Defendants.

NOTICE

The Court has issued its Opinion and Order on Defendants' Motion for Summary Judgment. (ECF No. 35.) During its deliberation, the Court ignored portions of Plaintiff's affidavit, filed as an attachment to the Response in Opposition, on the grounds that it directly contradicted sworn deposition testimony and, therefore, constituted a "sham affidavit." (*Id.*, 11 n.4.) This is the second time in as many weeks that the Court has found it necessary to do so. *See Mustard v. Trimen, Inc.*, No. 2:21-cv-2315 (S.D. Ohio) (Opinion and Order, ECF No. 25, 14 n.5). In both cases, the plaintiff was represented by attorneys from The Spitz Law Firm. With sadness and disappointment, the Court must now put those attorneys on notice.

The Spitz Law Firm, and all attorneys practicing therein, are hereby **CAUTIONED** to refrain from this and similar practices in future actions—before any court. If those attorneys are yet unaware, let it now be said on the record: Manufacturing questions of fact is not how you survive summary judgment. Future conduct of this sort may result in the imposition of sanctions against counsel.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE